

**Memorandum of Understanding
Between the New Mexico Department of Public Safety
and
Rio Arriba County**

**E-MAILED
3/6/2015**



This Memorandum of Understanding "MOU" is entered into by the New Mexico Department of Public Safety, State Police Division, hereinafter referred to as "DPS" and Rio Arriba County, hereinafter referred to as "RAC", and collectively known as "Parties".

The Parties agree as follows:

1. RAC will allow DPS to use the old Tierra Amarilla School Library located at Highway 531, Building # 042, Chama, New Mexico, hereinafter referred to as "Premises", for a temporary quarters at a cost of zero dollars \$0.00 per month. Payment will be monthly according to the terms of this agreement upon receipt of an invoice from Rio Arriba County.
 - a. The Leasable Square Footage of the leased space is 2,969 square feet.
2. DPS will furnish all of its own equipment and supplies. Any equipment or supplies furnished by DPS and brought into the Tierra Amarilla School Library will remain the property of DPS and may be removed at the end of DPS tenancy.
3. DPS will make arrangements for its own telephone and internet service.
4. RAC will furnish DPS with keys to the library and any and all changes required by DPS will be paid by DPS, including, but not limited to keying of locks, change of internet and or phone services. For security purposes DPS will maintain all keys once any change is made.
5. This MOU is effective for two years beginning July 1, 2014 and ending on June 30, 2016 and may be renewed only by written mutual consent of the parties.
6. This MOU shall be governed by the laws of the State of New Mexico.
7. If any part of this MOU is held to be invalid by a court of competent jurisdiction, the remainder, or its application to other situations or persons, shall not be affected.
8. Any employee of one of the parties who provides services under this MOU shall remain the employee of his/her employer, who shall remain responsible for that employee's salary, fringe benefits, worker's compensation benefits, and unemployment compensation. Any of the parties' employees who undertake any activities under this MOU shall remain subject to the supervision of his or her employer.
9. By entering into this MOU, neither party waives its sovereign immunity, and does not waive any defenses or any limitations of liability available under law.

No provision of this MOU establishes any waiver of immunity from liability for alleged tortious conduct of any employee of either party arising from the performance of this MOU apart from that set forth in the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, and et seq., as amended. Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this MOU.

10. This MOU may be terminated for the convenience of either party upon written notice received One Hundred Fifty (150) days in advance of termination.

11. DPS shall use the premises for purposes of carrying on state business. More particularly, DPS shall use the leased premises for, among other things:

a. The premises will be utilized for police business as needed for the performance of law enforcement duties.

12. Condition of Premises. RAC warrants that the premises are in good and safe condition, structurally sound and of safe design and that they comply with all applicable building codes, ordinances, rules and regulations, except as noted:

Not applicable.

All noted conditions shall be rectified prior to the inception of this MOU or within sixty (60) days thereafter. Failure to correct any dangerous condition constitutes substantial breach.

13. Accessibility to the Disabled. RAC warrants that the premises shall meet standards consistent with the Americans with Disabilities Act (ADA) within sixty (60) calendar days of the execution of this MOU. RAC also warrants that the premises will be maintained in compliance with these standards.

14. Delivery of possession. RAC warrants that the premises will be vacant and will put DPS in possession on the first day of the initial term or any subsequent term.

15. Damage to Premises. If at the inception of this MOU or at any time thereafter (including any renewal) all or any part of the premises shall be so damaged or destroyed through any cause, other than DPS willful act as to be rendered unfit for DPS occupancy, in DPS judgment, DPS may declare this MOU terminated without the 150 day notice requirement and rent shall be payable only to the date of the damage. Alternatively, DPS, in its sole discretion, may continue to occupy any portion useful to it, and the rent shall abate in proportion to the portions not useful to DPS.

If at the inception of this MOU or at any time thereafter (including any renewal) all or any part of the premises shall be so slightly damaged through any cause, other than DPS willful act, ordinary wear and tear or repair subject to routine maintenance, as not to be rendered unfit for DPS occupancy, in DPS judgment, RAC shall repair the premises with all reasonable promptness, at RAC expense, and the rent shall abate fairly until repairs are completed. However, if RAC fails to promptly commence or to expeditiously complete repairs necessary to restore the premises to their former condition, DPS may declare this MOU terminated without the 150 day notice requirement and rent, including any fair abatement thereof, shall be payable only to the date of termination. Alternatively, if RAC fails to promptly commence or to expeditiously complete repairs, DPS, in its sole discretion, may perform or cause to be performed such repairs, and may deduct the costs from rent, including any fair abatement.

DPS decision as to whether all or any part of the premises is fit or unfit for occupancy shall be final, but DPS decision shall be reasonable in the circumstances.

16. Alterations. DPS shall obtain RAC written permission before making any alterations or improvements of a permanent nature which permission shall not be unreasonably withheld.

17. Ownership of Improvements. All alterations and improvements made to or placed in the premises by DPS are and shall remain DPS property except as the parties mutually agree upon otherwise.

** Note
Tomas Campos signed
this page on
original contract.
State Police sent
back a different
version.*

in writing, if such alterations and improvements can be removed without undue damage to the premises and are, in fact, removed by DPS prior to termination of this MOU or any renewal thereof or within a reasonable time after termination. Alterations and improvements of a permanent nature which cannot be removed without undue damage to the premises shall become RAC property except as the parties mutually agree otherwise in writing.

18. **Condition of Premises upon Surrender.** At the termination of this MOU, DPS shall surrender the premises in the condition in which they were at the inception of this MOU, excepting:

- a. deterioration caused through reasonable use and ordinary wear and tear;
- b. alterations, improvements or conditions made with RAC written approval; and
- c. any change, damage or destruction not resulting from DPS willful act.

19. **Payment of Assessments, etc.** RAC shall pay as they become due all assessments, charges, mortgages, liens and taxes payable in respect to the premises during the term of this MOU. If RAC defaults in paying any such amounts, DPS, in its sole discretion, may pay any assessment, charge, mortgage, lien or tax. Upon doing so, DPS shall be subrogated to the creditor's rights and may deduct the cost of such payment from rent.

20. **Utilities, Janitorial Services and Supplies.** Utilities, janitorial services and supplies shall be paid for by the party indicated by an "X." (Where not applicable, enter "N/A"):

	RAC	DPS
a. water	X	
b. sewer	X	
c. refuse disposal	X	
d. propane		X*
e. electricity		X*
f. janitorial services and supplies		X

*These utilities to be paid by Village of Chama

21. **Right of Entry.** RAC or his agent has a right to enter upon the leased premises to inspect, to make repairs and for other reasonable purposes, with DPS permission, which shall not be unreasonably withheld. In an emergency, such as fire, RAC or his agent may enter the premises without securing DPS prior permission, but shall give DPS notice of entry as soon thereafter as practicable.

22. **Duty to Maintain Premises.**

- a. RAC has the duty to reveal to DPS all structural defects of which he knows or reasonably should know, and to repair all structural defects in the premises.
- b. RAC has the duty to repair and maintain the exterior of the premises, including but not limited to: roof, windows, grounds, parking lots, sidewalks, doors and lighting in safe condition and in good repair and condition. DPS has the duty to inspect and notify RAC of exterior conditions.
- c. RAC has the duty to repair and maintain the interior of the premises, including but not limited to: cooling system, heating system, plumbing, lighting, doors, flooring, wall finishes, except as otherwise provided in paragraphs 15 and 18.

* This page is not
the same version of
original agreement.

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- d. If, after written notification, RAC fails to perform required maintenance, DPS may abate rent, or perform the maintenance and withhold the cost of the maintenance from RAC.
23. **Duty to Insure.**
- a. During the term of this lease and any extension thereof, DPS shall provide coverage for liability of DPS and its "public employees," as defined in the Tort Claims Act, and for its personal property and tenant's improvements and betterments, as required by New Mexico law.
- b. During the term of this lease and any extension thereof, RAC shall maintain in force a policy or policies of insurance providing:
1. comprehensive general liability coverage of not less than \$1,000,000 limit per occurrence, including coverage for property damage, bodily injury and wrongful death. Such insurance policy or policies shall name the "State of New Mexico, its branches, agencies, instrumentalities and public employees" as additional insured, and
 2. fire, lightning and extended coverage, or "all risk" coverage, for at least 80% of the actual cash value of the premises.
- c. To the extent permitted under their respective insurance policies, RAC and DPS waive all rights, against each other, for damages arising out of any damage to or destruction of the leased premises caused by fire or other perils insured against.
- d. RAC releases and discharges the DPS and its "public employees" as defined in the Tort Claims Act from any and all claims, damages and causes of action arising out of any damage to or destruction of the leased premises where such damage or destruction was not caused by the willful act of DPS or any of its "public employees."
- e. RAC shall provide certificates of coverage or proof of self-insurance evidencing compliance with this section which shall be attached to this lease at the time of execution. RAC shall notify DPS within ten days after cancellation or expiration of any required coverage.
24. **Right to Terminate upon Breach of Condition or Agreement.** Either party may terminate this lease upon the other party's substantial breach of any term or condition contained in this lease, provided that the breaching party shall be given thirty (30) days from the receipt of written notice of a substantial breach to cure the breach or to begin and proceed, with due diligence, to cure a breach that cannot be cured within thirty (30) days. In the event of a substantial breach, the non breaching party shall give the breaching party written notice that describes the nature of the breach and notifies the breaching party that, unless the breach is cured within the time limits contained herein, the lease shall terminate without further notice at the end of the cure period. Upon termination of the lease, DPS shall surrender the premises to RAC and shall be obligated to pay rent only to the date of surrender.
25. **Special Damages.** If through RAC's willful breach of any term or condition, DPS must vacate or cannot take possession of the leased premises, DPS may recover, in addition to any other damages, special damages, including the cost of employee time lost, moving costs and all other reasonably ascertainable costs connected with relocating to other premises.
26. **Lease Binding on Heirs, etc.** This lease is binding upon the heirs, executors, administrators, personal representatives, assignees and successors-in-interest of the parties.
27. **Amendments to be in Writing.** This lease shall not be altered or amended except by instrument in writing executed by the parties.

28. **Address for Notices, Payment of Rent, etc.** Notices required under this lease and rental payments shall be made at the following addresses, except as changed by written notice to the opposite party:

a. **Rio Arriba County**
Thomas Campos, County Manager
Telephone No: 575-588-7254
Address: 1122 Industrial Park Road
Española, NM 87532

Fax No: 575-588-7810
E-mail: TCampos@rio-arriba.org

b. **Department of Public Safety**
Procurement Bureau
Telephone No.: (505) 827-9626
Address: PO Box 1628
Santa Fe, NM 87507

Fax No.: (505) 827-3438
Email: elizabeth.haring@state.nm.us

29. **Facilities Management Division Approval.** This lease shall not be binding or effective until approved by the Facilities Management Division Director.

30. **Early Termination.** This lease shall terminate prior to the end of the term set forth in Paragraph 2 of this lease, without penalty to DPS, upon the occurrence of one or more of the following events:

- a. The New Mexico Legislature fails to grant sufficient authority and appropriations to the Lessee to carry out the terms and conditions of this lease;
- b. The Governor of New Mexico, pursuant to Executive Order, or the New Mexico Legislature, pursuant to statute, eliminates or transfers employees or functions of DPS; or
- c. The State of New Mexico builds a new building or purchases or otherwise acquires an existing building and includes space in such new or existing building for DPS.

Upon the occurrence of one or more of the above events, this lease shall terminate when required by law or upon the Facilities Management Division Director giving RAC ninety (90) days written notice, whichever occurs first. The Facilities Management Division Director's decision as to whether one or more of the above events has occurred shall be final and binding upon the parties to this lease.

31. **Environmental Safety.** RAC warrants that the premises comply with any and all federal and state environmental regulations. During the term of this lease, RAC agrees to maintain the premises consistent with these regulations. Should an environmental hazard which threatens the life, health or safety of DPS employees and/or the public be discovered, the DPS may terminate this lease in accordance with Paragraph 24.

32. **Notice.** The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

In Witness Whereof, the parties have agreed to the terms and conditions indicated above and have executed this agreement as of the date of the last signature below:

DEPARTMENT OF PUBLIC SAFETY



Gregory J. Fouratt, Cabinet Secretary or designee

Date: 2/23/15

Approved as to form and legal sufficiency:



Amy L. Orlando, General Counsel or designee

Date: 2/19/15

NM GENERAL SERVICES DEPARTMENT, FACILITIES MANAGEMENT DIVISION



George D. Morgan, Director or designee

Date: 3/3/15

RIO ARRIBA COUNTY



Thomas Campos, Rio Arriba County Manager

Date: 2/19/15